

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

June 3, 2009

BY U.S. MAIL

[REDACTED]
Washington, DC 20

Re: Freedom of Information Act Appeal

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. § 2-531 *et seq.* (the "DC FOIA"), dated November 17, 2008 (the "Appeal"). We forwarded the Appeal to the Metropolitan Police Department ("MPD") with a request for a response. The MPD responded by letter dated December 5, 2008 ("MPD Response"). It should be noted Appellant never provided a copy of his original FOIA request(s) with his Appeal and this Office only obtained a copy of Appellant's original FOIA request(s) on May 22, 2009.

In your initial FOIA Request dated October 7, 2008, you sought the following:

- 09-012 – "[A]ny information on [REDACTED] and [REDACTED] matter relating to assault of [REDACTED] and [REDACTED]; and
- 09-006 – "[A]ny information on [REDACTED]; [A]ny information on matters involving [REDACTED] Southeastern University . . . ; [A]ny information on the false assault charge by [REDACTED] member at Grand Hyatt Hotel NW Washington; [A]ny information on Officer Caldwell . . . relating to Southeastern University incident.

MPD responded to your FOIA Request (09-012) in a letter dated November 3, 2008, denying your request at this time because "your request must be accompanied by notarized release statements signed by [REDACTED] and [REDACTED] granting you permission to receive any criminal history . . . , if criminal history records are available."

MPD responded to your FOIA Request (09-006) in an undated letter, denying your request because to “admit or deny the existence of any complaint or disciplinary actions” would constitute an unwarranted invasion of the privacy of the Officer.

On Appeal, Appellant challenges MPD’s denial of his FOIA request.

Discussion

It is the public policy of the District government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code, 2001 Ed. § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect ... and ... copy any public record of a public body” *Id.* § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. D.C. Official Code, 2001 Ed. § 2-534.

MPD denied Appellant’s FOIA request 09-012 on the grounds the subjects have not granted Appellant authority to receive their criminal histories and this would constitute an unwarranted invasion of their privacy. Exemption 2 of the DC FOIA states “information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of the personal privacy” is exempt from disclosure. D. C. Code § 2-534(a)(2). Because the DC FOIA statute is modeled on the corresponding federal statute, 5 U.S.C. § 552, courts have looked to decisions under the federal act in interpreting our local DC FOIA statute. *See Barry v. Washington Post Co.*, 529 A.2d 319 (D.C. 1987). Under the federal statute, courts are generally reluctant to provide third parties access to presentencing investigative reports for other individuals. *See U.S. Dep’t of Justice v. Julian*, 486 U.S. 1 (1988). The Supreme Court has stated exemptions under the federal FOIA statute require courts to “[B]alance the privacy interests of those who are the subject of the documents in question or those who may be harmed by their release against the public interest in the release of the documents.” *Hines v. District of Columbia Bd of Parole*, 567 A.2d 909, 912 (D.C. 1989). In *U.S. Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), the court viewed the issue as “whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information.”

Here, Appellant is seeking the criminal histories of individuals who may have come into contact with MPD so he can write a book about these individuals. We are confident the release of this information would not serve a public interest that would outweigh the harm these individuals would face if this information were to be released by MPD. Further, in light of the fact Appellant has not sought to obtain the requisite release statements from these individuals, the District cannot disclose the information Appellant seeks.

Turning to Appellant’s FOIA Request 09-006, specifically the first three prongs of this request, MPD stated no responsive documents were found. The DC FOIA states

“any person has a right to inspect . . . any public record of a public body. . . .” D. C. Code § 2-532(a).

Here, MPD has satisfied its obligation under the DC FOIA statute. After MPD conducted a search of its records, it found no responsive documents. There is nothing in the record to question this finding and we are satisfied that there are no responsive documents in MPD’s possession as it relates to Appellant’s FOIA Request.

Turning to the last prong of Appellant’s FOIA Request 09-066, MPD stated it could not admit or deny the existence of complaints against the officer because it would constitute an unwarranted invasion of the officer’s privacy. We believe MPD cannot sufficiently address this aspect of Appellant’s FOIA request because it is too broad. Appellant requested information regarding Officer [REDACTED] relating to the Southeastern University incident, but provides nothing more, such as a timeframe of when the incident may have occurred.

Therefore, we UPHOLD MPD’s decision denying all of your FOIA Request.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,



Runako Allsopp
Deputy General Counsel to the Mayor

cc:

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